

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

**BRIAN L. KLOSTER,**

**Plaintiff,**

**vs.**

**CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,**

**Defendant**

**No. C13-1002**

**ORDER GRANTING MOTION FOR  
ATTORNEYS FEES PURSUANT TO  
42 U.S.C. § 406(b)**

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This matter comes before the Court on the Motion for Attorneys Fees Pursuant to 42 U.S.C. § 406(b) (docket number 23) filed by the Plaintiff on June 25, 2015, and the Response (docket number 24) filed by the Commissioner on July 9, 2015. Plaintiff's counsel asks that he be awarded attorney fees in the amount of \$10,040.00.

On January 22, 2013, Plaintiff filed a Complaint seeking review of the Commissioner's decision to deny his application for Title II disability insurance benefits. *See* docket number 4. On September 24, 2013, the Court entered a ruling reversing and remanding this matter to the Commissioner for further proceedings. *See* docket number 16. On December 30, 2013, the Court granted Plaintiff's application for attorney fees under the Equal Access to Justice Act ("EAJA"), in the amount of \$4,263.60. *See* docket number 20.

On May 26, 2015, the Social Security Administration awarded disability insurance benefits to Plaintiff, including \$64,160.00 in back benefits. *See* Exhibit B (docket number 23-1) attached to Plaintiff's Motion (docket number 23). In the award letter, the agency withheld \$16,040.00 from the total of Plaintiff's past-due benefits award to pay his attorney fees. *See Id.* \$16,040.00 constitutes 25% of Plaintiff's past-due benefits award,


which is the amount agreed to between Plaintiff and his attorney in their "Fee Agreement." *See* Exhibit A (docket number 23-1). \$6,000.00 has already been paid to Plaintiff's counsel for work performed before the Social Security Administration. *See* docket number 23 at 2; ¶ 7. Thus, Plaintiff's counsel seeks \$10,040.00 under his "Fee Agreement" with Plaintiff.

Generally, when counsel for a Plaintiff in a social security appeal is awarded section 406(b) fees, he or she is required to refund the fees previously ordered under the EAJA. Here, however, the EAJA fee awarded in December 2013 was offset, and Plaintiff's counsel did not receive any attorney fees for his work. *See* Exhibit D (docket number 23-1). Thus, Plaintiff's counsel requests payment of \$10,040.00 in attorney fees pursuant to 42 U.S.C. § 406(b). In her response, the Commissioner states that she "has no objection to an award under § 406(b) in the amount of \$10,040.00." *See* docket number 24 at 2. Accordingly, the Court finds that the motion should be granted.

### **ORDER**

IT IS THEREFORE ORDERED that the Motion for Attorneys Fees Pursuant to 42 U.S.C. § 406(b) (docket number 23) filed by Plaintiff on June 25, 2015 is hereby **GRANTED**. Attorney Thomas A. Krause shall be paid attorney fees in the amount of Ten Thousand Forty Dollars (\$10,040.00) pursuant to 42 U.S.C. section 406(b).

DATED this 14th day of July, 2015.

  
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JON STUART SCOLES  
CHIEF MAGISTRATE JUDGE  
NORTHERN DISTRICT OF IOWA